

functional impairment for injuries to the left shoulder and throat, while reserving her rights to seek additional medical treatment and review and modification, should the facts warrant.

Claimant now requests post-award medical treatment under K.S.A. 44-510k. In the March 19, 2002 Award, the Judge denied claimant's request for additional medical benefits, finding:

It appears that the Claimant's position must be that she suffers from a laryngeal infection that has existed from the date of her surgery in July 1998. Weighing against this theory is that the Claimant received antibiotics during her treatment with Dr. Wanless, and the inability of Drs. Pease or Merati to clearly diagnose any infectious process. Instead, the better evidence is that the Claimant suffers from laryngeal inflammation due to a combination of smoking, acid reflux, and caffeine ingestion. Accordingly, her request for additional medical treatment and payment of medical expenses is denied.

Claimant contends Judge Benedict erred. Claimant contends her throat problems began in July 1998 as a consequence of the surgery that she underwent for her left shoulder injury. Accordingly, claimant requests the Board to reverse the March 19, 2002 Award and grant her (1) continuing medical treatment for her throat by the physician of her choice, (2) reimbursement of the out-of-pocket medical expenses related to her throat treatment, and (3) payment of all the outstanding medical bills for the medical treatment for her throat that she received from Dr. Merati, Dr. Pease and the University of Kansas Medical Center.

Conversely, respondent and its insurance carrier contend the Award should be affirmed as they believe the Award is appropriate and adequately supported by the record. In this request for additional medical treatment, respondent and its insurance carrier challenge only whether claimant's present throat problems are related to the work-related left shoulder injury.

The only issues before the Board on this appeal are:

1. Are claimant's ongoing throat problems directly related to the surgery that she received for her work-related shoulder injury?
2. If so, is claimant entitled either to reimbursement or payment of the medical expense that she has incurred for her throat problems following the September 25, 2000 settlement hearing?

FINDINGS OF FACT

After reviewing the entire record, the Board finds:

1. Claimant injured her left shoulder in either April or June 1998 and filed this workers compensation claim. As a result of that accident, claimant tore her left rotator cuff and underwent shoulder surgery in July 1998.
2. Shortly after the shoulder surgery, claimant began having throat problems for which she received extensive medical treatment.
3. On September 25, 2000, the parties settled this claim for the left shoulder and throat-related injuries, reserving claimant's rights to seek additional medical treatment and review and modification of the award. The settlement worksheet attached to the settlement hearing transcript indicates that respondent and its insurance carrier at that time had paid over \$61,594 in medical expenses in this claim, which, according to claimant, included seven throat surgeries. Accordingly, the parties settled this claim with respondent and its insurance carrier accepting responsibility for the throat problems that claimant experienced immediately following the shoulder surgery.
4. After the settlement hearing, in November 2000, claimant returned to Dr. Benjamin C. Pease, who was authorized to treat claimant following the July 1998 shoulder surgery, seeking additional treatment. According to claimant, at that time she was having difficulty swallowing, experiencing a severe sore throat, and choking on food. In short, claimant believed she was experiencing symptoms similar to those that she had experienced before the September 2000 settlement. Dr. Pease's notes indicate claimant's symptoms in November 2000 were primarily related to her sinuses. But those notes indicate that claimant had a sore throat at their next visit, which was nine days later.
5. In December 2000, Dr. Pease referred claimant to Dr. Albert L. Merati at the University of Kansas Medical Center after she began complaining of more neck pain and difficulty breathing. Moreover, a CT scan revealed a large inflammatory mass beneath claimant's vocal chords. Dr. Pease selected Dr. Merati, who is a board-certified otolaryngologist, as Dr. Merati specializes in larynx problems and deals with some of the more difficult cases.
6. Dr. Merati first saw claimant in December 2000 and diagnosed laryngitis, possible airway obstruction and possible chondritis of the larynx. While treating claimant, the doctor performed three surgeries on claimant's throat. In the first surgery, the doctor took a biopsy of claimant's cartilage from around the larynx. In the second and third surgeries, the doctor removed swollen tissue from claimant's vocal chords, opening the airway and improving claimant's voice quality.

7. Dr. Pease last saw claimant in September 2001. At that time, the doctor prescribed both antibiotics and an acid blocker for claimant's laryngitis, along with samples of a nasal spray for her allergies. According to Dr. Pease, claimant presently needs additional medical treatment, including treatment from a pain specialist.

8. For purposes of this post-award request, claimant deposed both Dr. Pease and Dr. Merati. Dr. Pease, who is also board-certified in otolaryngology, first saw claimant in 1998 upon a referral from her personal physician and treated claimant before the September 2000 settlement. Although respondent and its insurance carrier accepted responsibility for claimant's throat problems at the time of the settlement, the parties presented testimony from Dr. Pease regarding their etiology.

At his October 2001 deposition, Dr. Pease testified it was possible that claimant's throat problems were related to the surgery, but he "didn't find any evidence that would definitely say this was so."¹ The fact, however, that claimant's symptoms did not start for approximately three and one-half days following the surgery made the doctor suspect that claimant's throat problems were not directly related to the surgery and, more specifically, to the endotracheal tube that was inserted in the larynx during surgery.

On the other hand, Dr. Pease acknowledged that the throat problems could be indirectly related to the surgery as it was possible that the endotracheal tube could have caused an infection. The doctor testified, in part:

This is conjecture, but it is possible that a -- a tube could have disrupted some mucous membrane at another location in the throat and an infection could have been set up there.²

Assuming claimant was not having throat problems before the surgery, the doctor could not think of any other explanation for her symptoms. Dr. Pease admits he has never had another case such as claimant's and is, therefore, unable to identify the cause of claimant's throat problems.

9. Although Dr. Pease testified at his deposition that he could not relate claimant's throat problems to her shoulder surgery, the doctor had earlier written respondent and its insurance carrier's attorney on January 31, 2001, and had stated that claimant's throat problems were most likely caused by the intubation procedure. That letter reads, in part:

¹ Deposition of Benjamin C. Pease, M.D., p. 6 (October 11, 2001).

² *Ibid.*, p. 9.

Her problems initially started soon after general anesthesia back in July, 1999 [sic]. There is the question of whether the subsequent problems she has had are related to that operation and anesthesia. At this point it is impossible to know for sure but she did indeed have a substantial infection involving the larynx which can be caused by traumatic intubation. **She has no other risk factors or other problems that might have made her susceptible to such. It is my feeling that most likely the balance of her problems with relation to her throat have indeed likely been caused by the intubation. . . .** (Emphasis added.)

The record does not disclose why Dr. Pease changed his opinion between the date of the January 31, 2001 letter and his October 2001 deposition.

10. While being treated by Dr. Pease, claimant reported that she had problems drinking coffee and soda pop, and also reported that smoking aggravated her symptoms. Despite the fact that caffeinated beverages and smoking cigarettes irritated claimant's throat, Dr. Pease stated that those irritants definitely did not cause the inflammatory mass below claimant's vocal chords that the CT scan had revealed.³

11. Although Dr. Pease had problems relating claimant's present throat problems to her July 1998 shoulder surgery, Dr. Merati did not. Dr. Merati connected claimant's ongoing throat problems to the intubation procedure during her shoulder surgery. The doctor testified, in part:

Trying to figure out what had happened was -- I was very dependent on what the history was. The fact that she denied having had symptoms before and afterwards had developed basically a bacterial infection of the tissue around the larynx, which is very rare. I mean, I don't really remember seeing one like -- like this. I didn't see the acute infection, but so in my thinking, I tried to figure out how this could have happened considering she developed symptoms after the intubation, the specific times of which I don't recall, the time course of which I don't recall; but going from no symptoms to having symptoms and ultimately a bacterial infection, I presumed that there was -- a likely cause was some breach of the lining of the throat via the intubation and subsequent infection.⁴

According to Dr. Merati, claimant's symptoms were definitely related to the infection. And the doctor believed it was more probably true than not that claimant's infection was caused by the intubation procedure. Because bacterial laryngeal infection is so rare, the doctor did not believe that it had been caused by nasal drip.

³ See the correction sheet for Dr. Pease's October 11, 2001 deposition where the doctor writes: "With regard to smoking or caffeinated beverages I could say for sure that they aren't the cause."

⁴ Deposition of Albert L. Merati, M.D., pp. 7 and 8 (November 9, 2001).

When asked about the temporal relationship between claimant's July 1998 surgery and her condition in late 2000, Dr. Merati stated that infection and swelling in the larynx can exist for long periods, perhaps years. The doctor testified, in part:

Our experience with -- our, the field, our experience with cartilage infection and inflammation is that the swelling and irritation on the inside of the voice box goes on for a long time, months, can be even years, so that didn't -- that didn't -- the distance from -- any temporal distance from any injury didn't help me that much to dissuade me to say, oh, it's been too long since that event that it couldn't be. You know, we know that these things can smolder, and considering the amount of pain that she was describing, I certainly thought that was a possibility.⁵

12. Because claimant has had several operations on her larynx and because the larynx takes a long time to heal, Dr. Merati believes claimant needs ongoing medical treatment to monitor her closely and watch for scar formation and more inflammation.

13. In late 2000, claimant spoke with the insurance carrier's Bill Fricke regarding payment of additional medical expense for her throat treatment and was advised that the expense was not covered under the September 2000 settlement. Accordingly, respondent and its insurance carrier have not paid the medical bills incurred by claimant following the settlement and have not appointed an authorized treating physician. But, according to claimant, she and a private health insurance company have paid some of the expense.

14. Claimant initiated this post-award claim for additional medical treatment by filing an application with the Division of Workers Compensation on April 20, 2001. At the time of the August 9, 2001 post-award hearing, respondent and its insurance carrier were continuing to deny responsibility for claimant's post-settlement throat problems and they had not authorized claimant to see any physician for those complaints.

CONCLUSIONS OF LAW

The March 19, 2002 Award denying claimant additional medical benefits should be reversed.

Besides Dr. Pease's fluctuating opinions regarding causation, claimant's history of smoking, drinking caffeinated beverages and having acid reflux from the stomach attributes to the difficulty of determining the cause of claimant's post-settlement throat problems. The Board notes that Dr. Pease was unable to find an esophageal tear in claimant's throat when he saw her in July 1998, but the barium swallow test that the doctor performed could not rule out a laryngeal lesion as that test does not have the capacity to detect such a

⁵ *Ibid.*, pp. 19 and 20.

lesion. The Board also notes that Dr. Pease testified claimant's nasal drainage could cause a secondary infection, which, in turn, could cause swollen vocal chords. Finally, even before the July 1998 shoulder surgery, claimant had a sore throat as evidenced by June 1998 medical notes, which the parties stipulated into evidence, from claimant's personal physician, Dr. James D. Gardner. But the record does not disclose whether that fact is significant in determining the etiology of claimant's present problems.

The September 2000 settlement hearing resolved any causation issue surrounding claimant's post-surgery throat problems. The only issue now before the Board is whether claimant has shown a direct relationship between the July 1998 shoulder surgery and her present throat problems.

The Board is persuaded by the opinions provided by Dr. Merati and, therefore, concludes that claimant's post-settlement throat problems are directly related to the intubation procedure that was performed during her shoulder surgery. Dr. Merati has special expertise with the larynx, as recognized by Dr. Pease who referred claimant to Dr. Merati for that reason.

Claimant is entitled to an award of medical benefits for all the medical expense she incurred following the September 2000 settlement hearing through the date of this Order; provided, however, that such treatment is directly related to the treatment for claimant's larynx and throat and that such treatment was incurred within six months of the filing of the application for additional medical treatment. See K.S.A. 44-510k. Claimant entered into the record a list of medical expenses that she was requesting paid or reimbursed. Should the parties disagree as to whether those expenses are directly related to claimant's compensable larynx and throat problems, or disagree as to the reasonableness or necessity of the expense, the parties may request the appropriate hearing.

Additionally, claimant is entitled to receive ongoing medical treatment for her throat to be paid by respondent and its insurance carrier.

AWARD

WHEREFORE, the Board reverses the March 19, 2002 Award and grants claimant's request for payment and reimbursement of medical expenses incurred and for future medical treatment, as provided above. In the event respondent and its insurance carrier do not designate an authorized treating physician, claimant may select her own and respondent and its insurance carrier shall be responsible for the medical expenses incurred as authorized medical treatment.

IT IS SO ORDERED.

Dated this ____ day of July 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Seth G. Valerius, Attorney for Claimant
Kip A. Kubin, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Workers Compensation Director